IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 373 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHUDGAR CHUNILAL POPATLAL

Versus

KHATRI HARILAL RAMJIBHAI

Appearance:

MR PM RAVAL for Petitioner

MR ND NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/04/2000

ORAL JUDGEMENT

#. The petitioner - tenant has invoked the jurisdiction of this court under section 29(2) of the Bombay Rent Act by this civil revision application. The trial court had dismissed the suit of the original plaintiff, that is, the present petitioner herein for getting the decree for

possession on the ground of nonpayment of rent as well as for nonuser of the suit premises and in appeal the appellate court decreed the suit on the ground of nonpayment of rent by the defendant - tenant and that is how the tenant has come in this civil revision application.

#. The plaintiff had instituted the civil suit being Regular Civil Suit No.86/78. The suit property which is a shop, situated in Nanalal Market of Jawahar Chowk in Surendranagar Town. The defendant is the tenant of the said shop at the monthly rent of Rs.10/- and that he was in arrears of rent from 19.3.1969 to 19.1.1977 and that the arrears come to Rs.550/-. The plaintiff, therefore, gave the demand notice asking the tenant to pay the arrears of rent and also to hand over the possession as according to the plaintiff the tenant was not using the suit property since last six years. Ultimately, the suit for eviction was filed as the defendant did not comply with the suit notice.

#. The defendant appeared in the suit by filing the written statement at Exh.12. He denied that, he was in arrears of rent. According to him, the landlord was not accepting the rent and that he is also not giving the credit of the payment which he has already made to him. It was also stated in the written statement that the suit notice was served at the false address, and therefore, he had no opportunity to reply the suit notice. It was also denied that, he was in arrears of the rent. Other grounds of nonuser as well as subletting of the suit premises as alleged in the plaint were also denied by the defendant.

#. The learned trial Judge framed various issues at Exh.14 and thereafter, after recording the evidence of the parties and after hearing the arguments of the learned advocates for the parties, dismissed the suit for possession. The trial court was of the opinion that the defendant was ready and willing to pay the rent and adverse inference was drawn against the plaintiff for not producing his account books. The trial court believed that the defendant had paid Rs.600/- to the plaintiff, and therefore, he was not in arrears of the rent. The case of subletting was also not believed by the trial court and accordingly the suit was dismissed in toto.

#. The plaintiff carried the matter in appeal by filing Regular Civil Appeal No.109/79 before the appellate court. The said appeal was heard by the Assistant Judge, Surendranagar. The appellate court was of the opinion

that the defendant - tenant was in arrears of the rent for more than six months and he had not paid the rent within one month after receiving the suit notice. The appellate court, therefore, decreed the suit of the plaintiff for possession on the ground of nonpayment of the rent.

#. The aforesaid decree of the appellate court is impugned in this civil revision application at the instance of the petitioner herein.

#. At the time of hearing of this civil revision application, Mr.Raval learned advocate for the petitioner argued that, when two views are possible regarding the payment of rent by the tenant to the landlord, the view taken by the trial court should have normally been accepted by the appellate court and that the appellate court should not have interfered with the finding of fact given by the trial court in so far as the say of the tenant that he had gone to the landlord for the payment of the rent is concerned.

#. Mr.Raval further submitted that, in any case, the landlord had not produced any books of account, counter foil of the rent receipt to show whether the tenant has really paid the rent or not, and therefore, the oral say of the defendant that he had paid the entire rent should have been believed in view of the judgment of this court reported in 1982 GLH, 674.

#. As against that, Mr.Hriday Buch for the respondent has argued that the appellate court which is a final court of facts can come to its own conclusion and the jurisdiction of the appellate court is not restricted or in any case it's jurisdiction is not pare-materia with the revisional jurisdiction of this court and that when the entire matter is at large before the appellate court, the appellate court is entitled to take different view on facts on appreciation of the evidence on record. According to him, therefore, the appellate court was right in taking the contrary view then one taken by the trial court. It was also argued by Mr.Buch that, when the evidence on record is clear that the tenant has not paid the rent, then it is not material whether the landlord has produced the counter foil of the rent receipts or not. In his submission, therefore, revision application is devoid of any merits, and that the same deserves to be dismissed.

##. So far as the first contention of Mr.Raval about the payment of the rent is concerned, the learned appellate

Judge has considered the aforesaid fact in para 13 of his judgment. It is not in dispute that the plaintiff had served the suit notice to the defendant by registered post as well as by certificate of posting, but he had not given any reply to the suit notice. The defendant had not tendered any arrears of the rent within one month of the receipt of the suit notice. The defendant contended that, he had gone to Limdi with one Laljibhai Nanjibhai and Jayantilal Virjibhai. He had paid the arrears of the rent to the landlord including the notice charges and that is how he had cleared up the entire arrears of the rent. On appreciation of the evidence on record, the appellate court came to the conclusion that, the theory put forward by the defendant that he had gone to village Limdi and paid the arrears of the rent to the plaintiff was absolutely fabricated story and was not believable at all. The tenant had initially contended that, he had not received the suit notice at all and that notice was sent to his nephew. However, the appellate Judge found that there is nothing on record to show that, there was any strange relationship between the defendant and his nephew. It is found that, even if, his nephew received any post, then in turn, he repost the same to the defendant. After considering over all evidence on record, the appellate court found that the defendant must have received the suit notice from his nephew. It is not in dispute that the defendant's nephew has not received the suit notice. Not only that, the defendant has not even examined his nephew to prove his case that he had not given the said notice back to the defendant. On the aforesaid evidence, the appellate court drew valid and proper inference that the defendant has received the suit notice. It was found that, it cannot be said that the suit notice was served on the stranger. It is found that the nephew of the defendant used to sent the post of the defendant after returning to the defendant within 2 to 3 days on receiving the same. Under these circumstances, the appellate court came to the conclusion that the defendant had received the suit notice of demand. The landlord had also given another notice by the certificate of posting at Exh.27 and the defendant had admitted that the address on the said postal receipt is his address and on the said address, he receives the posts. Considering the evidence on record, the appellate court, therefore, found that the suit notice was received by the defendant. This being a finding of the fact on appreciation of the evidence on record cannot be disturbed by me exercising the revisional jurisdiction. In any case, it is the say of the defendant himself that, he had personally gone to Limdi and cleared up the arrears of the rent. If, the defendant had not received the suit notice, there was no

question on his part to go to Limdi for the payment of the arrears of the rent. It is, therefore, difficult to believe that the tenant after so many years suddenly had gone to Limdi for the purpose of the payment of the rent on his own. The defendant tenant has taken the plea that, he had gone to Limdi to pay the rent. Whether he had gone to Limdi or not is a different question which is required to be discussed lateron, but from the aforesaid say of the defendant that he had gone to Limdi to pay the rent would definitely suggest that he had received the suit notice. Therefore, I am of the opinion that the learned appellate Judge was perfectly justified in coming to the conclusion that the suit notice was served on the defendant and the said finding cannot be said in any manner contrary to the evidence on record or illegal.

##. It is the case of the defendant that, he had gone to see one Balbahadrasinh at Limdi and at the said place he was not available. Thereafter, he had gone to see the plaintiff with two persons, namely, Laljibhai Nanjibhai and Jayantilal Virjibhai and at that place he was asked by the plaintiff regarding the nonpayment of the rent and the defendant had paid Rs.600/- to the landlord at Limdi, though no receipt was given. It is impossible to believe the aforesaid say of the defendant and very cogent reasons have been given by the learned appellate Judge in para 18 of his judgment as to how the aforesaid story is not believable. It is not possible to believe that the defendant will go with two witnesses for the payment of the aforesaid amount. Notice was served by the plaintiff on 1.2.1977 and another notice by the certificate of posting was served on 8.2.1977. The appellate Judge found that the defendant has not stated as to how he had selected the date - 13.2.1977 for going to Limdi where he met the plaintiff and made the payment of the rent, even though, he had not received the suit notice as per the say of the defendant. It was found that the aforesaid theory is got up and absolutely unbelievable and the same is put forward only with a view to show that within one month of the receipt of the suit notice, the entire amount was paid by the defendant. Very cogent reasons have been given by the appellate Judge for not accepting the say of the defendant and I do not find any infirmity in the aforesaid findings recorded by the appellate court.

##. The appellate court has considered various aspects for coming to the conclusion that the aforesaid say of the defendant is not believable, and therefore, simply because the landlord has not produced any counter foil regarding the past period, it cannot be believed that for

the period in question the tenant has paid the rent. The facts of the present case are absolutely clear and it can be believed that within one month from the date of the receipt of the suit notice the tenant had not paid any arrears of the rent, and therefore, it cannot be held that since the landlord has not produced the documentary evidence about the counter foil, receipts etc., the oral say of the plaintiff must be accepted as held by this court in the case reported in 1982 GLH 674. Simply because the landlord in his evidence has stated that, he is keeping the account books, rent receipts etc, and as he has not produced the same, other evidence on record cannot be brushed aside. The defendant has not given any notice asking the plaintiff to produce such documents. The question which requires consideration is therefore, whether the defendant has paid the arrears of the rent as demanded in the suit notice or not. Learned appellate Judge has given categorically finding that the tenant has not paid the rent and regarding account books etc., detail reasoning is given in para 24 of his judgment.

##. It, therefore, cannot be said that, since two views are possible regarding the payment of the rent, view of the trial court should have been accepted by the appellate court. As a matter of fact, the appellate court while exercising its appellate jurisdiction has all the powers to reappreciate the evidence and to reach its own conclusion on facts. The first appellate court is the final court of facts and the appellate court's jurisdiction is not restricted in any manner in so far as the appreciation of the evidence on record is concerned. The appellate court, therefore, is entitled to take its own view on appreciation of the oral and documentary evidence on record, and therefore, I find absolutely no substance in the argument of Mr.Raval that, when two views are possible, the appellate court should have accepted the view taken by the trial court. Though, it seems that, two views are not possible and the view taken by the appellate court is the only logical and reasonable view. Therefore, the finding of the appellate is essentially a finding of fact and it cannot be disturbed by this court. This court even otherwise cannot substitute its own finding of fact by reversing the finding of the appellate court.

##. In that view of the matter, there is absolutely no substance in the arguments of Mr.Raval and accordingly this civil revision application deserves to be dismissed as having no merits worth the name. Civil Revision Application is accordingly dismissed. Rule discharged. Interim relief shall stand vacated. No order as to costs.

##. At this stage, Mr.Raval learned advocate for the petitioner requests the court that the stay of the decree for possession earlier granted may be continued for a period of three months as his client wants to approach the Honourable Supreme Court against the order of this court. In the facts and circumstances of the case, the decree for possession shall not be executed till 31.7.2000 for allowing the petitioner to take further recourse to law.

(P.B.Majmudar,J.)
(pathan)